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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
47 CFR 97.113(a)(3) Regarding Purported) WP Docket No. 10-72
Pecuniary Interest of Certain Employees)
Who Participate in Amateur Radio)
Emergency Communications Exercises)

COMMENTS OF THE
ARLINGTON COUNTY, VIRGINIA
OFFICE OF EMERGENCY MANAGEMENT

The Arlington County Virginia Office of Emergency management (OEM) supports amendment of 47 C.F.R. Part 97 as set forth in the Notice of Proposed Rulemaking WP Docket No. 10-72.

Issue

In September 2009, the American Radio Relay League (ARRL), a national amateur radio membership organization, publicly took the position that amateur radio operators who are employees of hospitals or government agencies (Employee(s)) violate Part 97 by participating in emergency communications exercises involving their employers. Specifically, the ARRL concluded that such participation violates Section 97.113(a)(3), which states:

Communications in which the station licensee or control operator has a pecuniary interest, *including communications on behalf of an employer*. Amateur operators may, however, notify other amateur operators of the availability for sale or trade of apparatus normally used in an amateur station, provided that such activity is not conducted on a regular basis;

47 C.F.R. § 97.113(a)(3) (2009) (emphasis added). Section 97.113(a)(3) neither states nor implies that an Employee may not participate in an amateur radio emergency exercise because an Employee is on an agency's payroll for non-amateur radio duties. The ARRL concluded, without citing a single actual example and without providing any legal basis for its position, that Employees who participate in emergency communications exercises at any time, even when away from work, were conducting "communications on behalf" of their employers in return for remuneration. Further, OEM knows of no instance in which the Commission has issued a warning letter or initiated an enforcement action against any Employee for participating in an amateur radio emergency communications exercise on the basis that the Employee violated the

prohibition against conducting communications for pecuniary interest set forth in Section 97.113(a)(3) by virtue of his or her being on the payroll of a hospital, government agency, or any other entity that participated in an amateur radio emergency communication exercise. Nevertheless, for motives known only to the ARRL, the organization has made an issue out of a non-issue, which has placed the matter before the Commission in the rulemaking context.

Pecuniary Interest

The definition of the word “pecuniary” includes “of or pertaining to money.” Clearly, Part 97 of the Commission’s regulations prohibits communication on amateur service frequencies that may provide an operator some personal monetary interest:

Amateur Service. A radio communication service for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest.

47 C.F.R. § 97.3(a)(4) (2009). This prohibition embraces International Telecommunications Union guidelines for amateur radio services. *See* ITU Article 1, Section 3, Rule 1.56 (<http://life.itu.int/radioclub/rr/art01.htm#Serv>).¹

Perhaps although well intentioned this use of term “pecuniary” with its somewhat undefined placement in the regulations has now created some unintended consequences, as it relates to Auxiliary Communications Service (ACS) volunteers who are Employees of entities involved in exercises devoted to preparation for emergency conditions.

The FCC could clarify the definition and application of the term “pecuniary.” Clarification could take the form of a de minimus floor to provide a safe harbor for a licensed amateur radio operator whose employment envisions a communications component that is incidental to the amateur’s principal duties. If a metric is desired, the rule could provide that an amateur can devote no more than five percent of on-duty time solely as a volunteer amateur radio operator in the support of emergency exercises, drills or tests. Similar guidelines were created by the FCC for RACES exercises and drills when the government sponsor had not issued an official activation of RACES.

Why Section 97.113 Should Not Be Considered Violated Merely By Virtue of Employment

¹ The United Kingdom bars use of the amateur service for “commercial purposes of any kind.” *See* <http://www.ofcom.org.uk/radiocomms/ifi/licensing/classes/amateur/Licences/samplelicence07.pdf>.

We believe that this point can best be made by citing an example. Arlington County OEM sponsors an Auxiliary Communications Service (ACS) as part of the National Incident Management System Emergency Support Function # 2 function (ESF # 2). ACS follows the Federal Communications Commission (Commission) / Federal Emergency Management Agency standards known as the Radio Amateur Civil Emergency Service (RACES). Arlington County OEM, thru ESF # 2, has appointed a county employee as RACES Officer and two other county employees serve as Assistant RACES Officers.

The pecuniary interest language in Part 97 is necessary to prevent the use and abuse of amateur radio frequencies for personal gain. However, there is no legal or other basis for construing Section 97.113(a)(3) so narrowly as to prevent Employees from participating in amateur radio emergency communication exercises merely because they are employed by the agency to carry out duties that have nothing to do with amateur radio. The ARRL urges an overly broad interpretation that would, if adopted by the Commission, remove untold numbers of licensed amateurs from the pool of available communicators, solely as a result of an incidental link to their employment. Section 97.113(a)(3) simply does not state or imply such a prohibition and it shouldn't.

Arlington County OEM has found RACES to be a valuable adjunct to other communications capabilities and has supported the program in a variety of ways, including permitting de minimus on-the-job time for activities involving RACES as incidental to various County positions. The RACES team has developed certification/recertification and training requirements that must be met by members for recommendation to the County for credentialing. Training sessions by means of drills and exercises are fundamental to satisfaction of these entry requirements, and to development maintenance and enhancement of the skills and expertise needed to assure dependable service in critical situations. Nearly all of the drills and exercises take place off-duty, and all team members participate on a voluntary basis. Therefore, the drills and exercises have no financial implications to employers or to the volunteers as employees. Amateurs participate pro bono. That said, some few volunteers may devote a de minimus amount of on-the-job time simply because timing requirements demand weekday daytime involvement.

The Arlington County RACES model is being emulated by many jurisdictions nationwide. However, the issue raised by the ARRL has cast a cloud over whether governmental or NGO agencies can develop a successful RACES program in which those amateurs with both communications expertise gained from their amateur radio experience, and their subject matter expertise gained on the job, could be found in violation of Federal law were they to volunteer. This cloud, or worse, a ruling adopting the ARRL position, removes valuable volunteers willing to dedicate personal time, talent and their personal radio equipment to a critically needed function, and denies the advantage of synergies that such knowledgeable employees could bring to the RACES teams.

Arlington County, Virginia Supports Amendment of Part 97

Notwithstanding the position of Arlington County OEM that Part 97 is not violated by an Employee who participates in amateur radio emergency communication exercises merely by virtue of his or her employment status with a government or other agency involved in incident response, OEM supports amendment of Part 97.

Consider what are the objectives of amendments to Part 97?

The first of the primary objectives of the amateur radio service is “enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications.”

What is the objective of the rule prohibiting business or paid use of the amateur service? (“Prohibited transmissions.... (2) Communications for hire or for material compensation, direct or indirect, paid or promised, except as otherwise provided in these rules.”) §97.113 (a)(2)) Obviously, the rule is to prevent hams from selling insurance, real estate, pizza, or anything else over the air, except for an occasional used radio during swap nets.

Is the use of amateur equipment for an emergency drill by a hospital employee similar to selling pizza over ham radio? The answer is a definitive “no”! If the hospital has volunteer licensed operators, who are also employees, who can test their skills and equipment during drills, their auxiliary communication service capability will be checked-out and ready in the event of an actual emergency. This emergency preparation activity is a pro bono service to the public; it should not be viewed as a problem or challenge to the primary objective of the amateur service. The FCC can follow the lead of UK who recently eliminated the waiver request rule which the FCC adopted in 2009 and go beyond that enhancement by providing for more realistic ACS joint exercises and drills that utilize employees of key critical infrastructure entities, NGOs, governments and other entities as noted below.

The recent blanket exclusion requested by the American Hospital Association should be extended as well to employees of public safety and other government agencies, employees of the Red Cross, other non-profit NGO's, and other National Critical Infrastructure entities such as telecommunications, cable, satellite carriers, TV or other such commercial entities which during national emergencies may provide needed life support and goods that directly benefit the public interest through the activation of ACS at entities such as WAL-MART, LOWES, HOME DEPOT, CONAG, Union Pacific, FEDEX, etc. Companies such as these are the threads of the fabric which make up the Nation's sustainment infrastructure (food, water, construction supplies, etc.). Without national emergency communications capabilities for these type entities unnecessary and perhaps life threatening delays in logistical responses to impacted areas will occur. The delays may lead to unnecessary additional loss of life and property, etc. In a nation-affecting emergency these corporations et al would be thrust into major public interest sustainment duties. Local, regional and national drills, exercises and tests of ACS in support of entities such as those noted above should not be hindered through regulations which do not support and have the best interests of the

Nation's security, public interest, and critical infrastructure as their primary objective during emergencies.

Recent severe weather and other disasters continue to demonstrate the priceless value of Auxiliary Communication Service (ACS) provided by volunteer amateur radio operators. By making the suggested common sense exceptions, the FCC will enhance the governments, hospitals, and other agencies, et al to better prepare and exercise emergency communication resources that may be required during major National emergencies.

In summary, Arlington County OEM sponsors an Auxiliary Communications Service (ACS) that includes amateur radio as part of the National Incident Management System Emergency Support Function # 2 (ESF # 2) position. The Arlington County ACS follows the Federal Communications Commission / Federal Emergency Management Agency protocol known as the Radio Amateur Civil Emergency Service (RACES). OEM ESF # 2 has appointed a county employee as RACES officer and two other county employees are assistance RACES radio officers. Amateur radio operation, while important to the OEM mission, is incidental to the duties of County employees. OEM supports amendment of 47 C.F.R. Part 97.

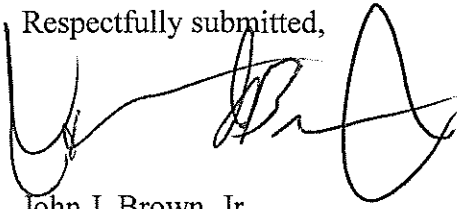
Part 97 should be amended because the waiver process now in place presents an undue, unnecessary burden upon those entities that prepare for emergencies with the use of exercises, test, and drills that utilize volunteer amateur radio operators. There are more than enough hurdles for the OEM education staff and planners to manage while they prepare for exercises, drills and test. The mandated bureaucratic process adds no value to the goals of the training exercise, while at the same time creates a single point of failure: for example, the waiver request is lost in the mail, misfiled, etc. There are no justifications in any of the regulations which would propose reasons why a request would be denied. The FCC's goal should be one of enabling best practices rather than hindering them through the use of unnecessary process. In Arlington County, Virginia, home of the Pentagon, which was attacked on September 11, 2001, the need for amateur radio support of emergency communications is profoundly appreciated by local, state and federal agencies.

Arlington OEM strongly supports the Commission's amendment of 47 C.F.R. § 97.113(a)(3), which would unburden amateur radio operators who are Employees as noted above from the threat of a Commission sanction when they participate in bona fide emergency communications exercises.²

Arlington County OEM commends the Commission on its forward thinking as it considers amending 47 C.F.R. Part 97.

² Amendment would embrace Radio Regulation 25.9A as agreed to at the World Radio communication Conference 3 in Geneva, Switzerland in 2003: "25.9A § 5A Administrations are encouraged to take the necessary steps to allow amateur stations to prepare for and meet communication needs in support of disaster relief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John J. Brown, Jr.', written over the text 'Respectfully submitted,'.

John J. Brown, Jr.
Director, Office of Emergency Management